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**FILED**  
**DISTRICT COURT OF GUAM**

SEP 17 2007

**JEANNE G. QUINATA**  
**Clerk of Court**

IN THE DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARWAN SHIPPING & TRADING CO.,  
FIVE SEAS SHIPPING CO., LLC, and S.J.  
GARGRAVE SYNDICATE 2724, *in*  
*personam*, NAVIGATORS PROTECTION &  
INDEMNITY, and AL-BUHAIRA  
NATIONAL INSURANCE COMPANY,

Defendants.

AND CROSS-CLAIMS, COUNTERCLAIMS,  
AND CLAIM IN INTERVENTION.

CIVIL CASE NO. 06-00011

**INCHCAPE'S RESPONSE TO  
NAVIGATORS INSURANCE COMPANY'S  
MOTION TO DISMISS AMENDED  
COMPLAINT IN INTERVENTION OF  
INCHCAPE SHIPPING SERVICES;  
DECLARATION OF SERVICE**

Inchcape takes no position with regard to Navigators' motion to dismiss. Even so, Inchcape points out Navigators' misleading reference to District Court of Guam case *CV 07-00010*, which at Page 4, line 16-17 of its motion Navigators has labeled the "Port Action".

First of all, the CV 07-00010 bears little if any pertinent relationship to the instant motion. Inchcape was granted leave to intervene in the instant action seeking, *among other*

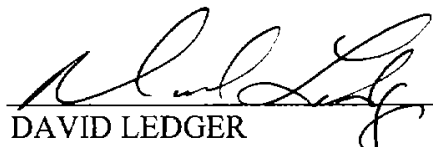
*things*, to participate in discovery in order to protect its interests against a \$1,000,000 written demand for damages from the Port Authority of Guam. In particular, the Port demanded \$1,000,000 from Inchcape for alleged damage to Port Authority property caused when the vessel AJMAN 2 battered the Port Authority's Pier F5 during a passing typhoon. In its written demand the Port Authority contended Inchcape had on the basis of an "agency agreement" agreed to assume liability for any damage caused by the AJMAN 2 while it was in port at Guam. Subsequent to the written demand and Inchcape's rejection of it, the Port through its legal counsel informed Inchcape that the Port Authority would file suit to recover the \$1,000,000. Rather than sit idly by and do nothing in the face of a \$1,000,000 written demand and overt threat of a lawsuit, Inchcape instead sought to participate in discovery and did so. Such discovery concerned, among other things, insurance coverage for the AJMAN 2, written by Navigators, which appeared to cover the damage to Pier F5 and on that basis could provide an indemnity for Inchcape against the Port's demand. That the Port Authority, for what ever reason, decided not to sue Inchcape for the damage to Pier F5 within the statute of limitation was indeed a welcome development. So far as this action is concerned, the Port's decision not to sue Inchcape put an end to Inchcape's need to seek indemnity from Navigators for the harm to Pier F5 caused by a Navigators' insured.

Notwithstanding a \$1,000,000 written demand to recover damages for harm to property caused by Navigators insureds, and threat of a lawsuit to recover damages for harm to property caused by Navigators insureds, in its instant motion Navigators misleads the Court to conclude that Inchcape "needlessly interjected" itself into this action. What's more, Navigators makes the same disingenuous assertion with regard to the Port Action.

Inchcape did not "needlessly intervene" in the Port Action. Rather, Navigators' insureds sued Inchcape for, among other things, indemnity on the Port's claim against them, primarily because their insurer, Navigators, desperately seeks to avoid coverage for the harm to Pier F5 and thus any liability to the Port Authority for the harm caused by its insureds, Marwan and the AJMAN 2. In other words, if Marwan and the AJMAN 2 are liable to the Port, Marwan wants either Navigators *or Inchcape to pay that liability*. Accordingly, Inchcape filed a third-party complaint against Navigators, again seeking indemnity, only this time against a lawsuit filed by Navigators' insureds.

DATED: Hagåtña, Guam, September 17, 2007.

CARLSMITH BALL LLP

  
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Attorneys for Intervenor  
Inchcape Shipping Services Guam LLC

**DECLARATION OF SERVICE**

I, David Ledger, hereby declare under penalty of perjury of the laws of the United States, that on September 17, 2007, I will cause to served, via hand delivery, true and correct copies of INCHCAPE'S RESPONSE TO NAVIGATORS INSURANCE COMPANY'S MOTION TO DISMISS AMENDED COMPLAINT IN INTERVENTION OF INCHCAPE SHIPPING SERVICES; DECLARATION OF SERVICE

upon the following:

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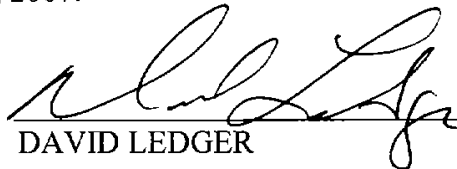
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**INCHCAPE'S RESPONSE TO NAVIGATORS INSURANCE COMPANY'S MOTION TO DISMISS  
AMENDED COMPLAINT IN INTERVENTION OF INCHCAPE SHIPPING SERVICES;  
DECLARATION OF SERVICE**

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DATED: Hagåtña, Guam, September 17, 2007.

  
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DAVID LEDGER